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HOUSE BILL 172

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Benjamin H. Rodefer

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; PROVIDING FOR A DRIVER'S
LICENSE AND IDENTIFICATION CARD WITH A PRINTED LEGEND
INDICATING THAT PURCHASE OF ALCOHOLIC BEVERAGES IS PROHIBITED;
ALLOWING A COURT OR THE PAROLE BOARD TO AUTHORIZE ISSUANCE OF
SUCH A LICENSE OR CARD AS A CONDITION OF PROBATION OR PAROLE;
PROHIBITING SALES OF ALCOHOLIC BEVERAGES TO HOLDERS OF SUCH A
LICENSE OR CARD; CREATING A NEW VIOLATION OF DRIVING WHILE
INTOXICATED; PROVIDING FOR SUSPENSIONS, REVOCATIONS AND FINES;
PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-20-6 NMSA 1978 (being Laws 1963,
Chapter 303, Section 29-18, as amended) is amended to read:

"31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING
SENTENCE.--The magistrate, metropolitan or district court shall

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1 attach to its order deferring or suspending sentence reasonable
2 conditions as it may deem necessary to ensure that the
3 defendant will observe the laws of the United States and the
4 various states and the ordinances of any municipality. The
5 defendant upon conviction shall be required to reimburse a law
6 enforcement agency or local crime stopper program for the
7 amount of any reward paid by the agency or program for
8 information leading to the defendant's arrest, prosecution or
9 conviction, but in no event shall reimbursement to the crime
10 stopper program preempt restitution to victims pursuant to the
11 provisions of Section 31-17-1 NMSA 1978. The defendant upon
12 conviction shall be required to pay the actual costs of the
13 defendant's supervised probation service to the adult probation
14 and parole division of the corrections department or
15 appropriate responsible agency for deposit to the corrections
16 department intensive supervision fund not exceeding one
17 thousand eight hundred dollars (\$1,800) annually to be paid in
18 monthly installments of not less than twenty-five dollars
19 (\$25.00) and not more than one hundred fifty dollars (\$150), as
20 set by the appropriate district supervisor of the adult
21 probation and parole division, based upon the financial
22 circumstances of the defendant. The defendant's payment of the
23 supervised probation costs shall not be waived unless the court
24 holds an evidentiary hearing and finds that the defendant is
25 unable to pay the costs. If the court waives the defendant's

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1 payment of the supervised probation costs and the defendant's
2 financial circumstances subsequently change so that the
3 defendant is able to pay the costs, the appropriate district
4 supervisor of the adult probation and parole division shall
5 advise the court, and the court shall hold an evidentiary
6 hearing to determine whether the waiver should be rescinded.
7 The court may also require that the defendant [~~to~~]:

8 A. provide for the support of persons for whose
9 support the defendant is legally responsible;

10 B. undergo available medical or psychiatric
11 treatment and enter and remain in a specified institution when
12 required for that purpose;

13 C. be placed on probation under the supervision,
14 guidance or direction of the adult probation and parole
15 division for a term not to exceed five years;

16 D. serve a period of time in volunteer labor to be
17 known as "community service". The type of labor and period of
18 service shall be at the sole discretion of the court; provided
19 that a person receiving community service shall be immune from
20 any civil liability other than gross negligence arising out of
21 the community service, and a person who performs community
22 service pursuant to court order or a criminal diversion program
23 shall not be entitled to wages, shall not be considered an
24 employee and shall not be entitled to workers' compensation,
25 unemployment benefits or any other benefits otherwise provided

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1 by law. As used in this subsection, "community service" means
2 labor that benefits the public at large or a public, charitable
3 or educational entity or institution;

4 E. make a contribution of not less than ten dollars
5 (\$10.00) and not more than one hundred dollars (\$100), to be
6 paid in monthly installments of not less than five dollars
7 (\$5.00), to a local crime stopper program, a local domestic
8 violence prevention or treatment program or a local drug abuse
9 resistance education program that operates in the territorial
10 jurisdiction of the court; [~~and~~]

11 F. not purchase or consume alcoholic beverages and
12 surrender any current driver's license or identification card
13 issued by the motor vehicle division of the taxation and
14 revenue department and obtain, upon payment of the required
15 fee, a new driver's license or identification card with a
16 printed legend indicating that the person is prohibited from
17 purchasing alcoholic beverages. The court shall forward any
18 surrendered driver's license or identification card to the
19 motor vehicle division, together with a copy of the order
20 authorizing issuance of a license or card with a printed legend
21 prohibiting the purchase of alcohol; and

22 [~~F.~~] G. satisfy any other conditions reasonably
23 related to the defendant's rehabilitation."

24 Section 2. Section 31-21-10 NMSA 1978 (being Laws 1980,
25 Chapter 28, Section 1, as amended) is amended to read:

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1 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

2 A. An inmate of an institution who was sentenced to
3 life imprisonment becomes eligible for a parole hearing after
4 the inmate has served thirty years of the sentence. Before
5 ordering the parole of an inmate sentenced to life
6 imprisonment, the board shall:

7 (1) interview the inmate at the institution
8 where the inmate is committed;

9 (2) consider all pertinent information
10 concerning the inmate, including:

11 (a) the circumstances of the offense;

12 (b) mitigating and aggravating
13 circumstances;

14 (c) whether a deadly weapon was used in
15 the commission of the offense;

16 (d) whether the inmate is a habitual
17 offender;

18 (e) the reports filed under Section
19 31-21-9 NMSA 1978; and

20 (f) the reports of such physical and
21 mental examinations as have been made while in an institution;

22 (3) make a finding that a parole is in the
23 best interest of society and the inmate; and

24 (4) make a finding that the inmate is able and
25 willing to fulfill the obligations of a law-abiding citizen.

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1 If parole is denied, the inmate sentenced to life
2 imprisonment shall again become entitled to a parole hearing at
3 two-year intervals. The board may, on its own motion, reopen
4 any case in which a hearing has already been granted and parole
5 denied.

6 B. Unless the board finds that it is in the best
7 interest of society and the parolee to reduce the period of
8 parole, a person who was convicted of a capital felony shall be
9 required to undergo a minimum period of parole of five years.
10 During the period of parole, the person shall be under the
11 guidance and supervision of the board.

12 C. Except for certain sex offenders as provided in
13 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a
14 first, second or third degree felony and who has served the
15 sentence of imprisonment imposed by the court in an institution
16 designated by the corrections department shall be required to
17 undergo a two-year period of parole. An inmate who was
18 convicted of a fourth degree felony and who has served the
19 sentence of imprisonment imposed by the court in an institution
20 designated by the corrections department shall be required to
21 undergo a one-year period of parole. During the period of
22 parole, the person shall be under the guidance and supervision
23 of the board.

24 D. Every person while on parole shall remain in the
25 legal custody of the institution from which the person was

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1 released, but shall be subject to the orders of the board. The
2 board shall furnish to each inmate as a prerequisite to release
3 under its supervision a written statement of the conditions of
4 parole that shall be accepted and agreed to by the inmate as
5 evidenced by the inmate's signature affixed to a duplicate copy
6 to be retained in the files of the board. The board shall also
7 require as a prerequisite to release the submission and
8 approval of a parole plan. If an inmate refuses to affix the
9 inmate's signature to the written statement of the conditions
10 of parole or does not have an approved parole plan, the inmate
11 shall not be released and shall remain in the custody of the
12 institution in which the inmate has served the inmate's
13 sentence, excepting parole, until such time as the period of
14 parole the inmate was required to serve, less meritorious
15 deductions, if any, expires, at which time the inmate shall be
16 released from that institution without parole, or until such
17 time that the inmate evidences acceptance and agreement to the
18 conditions of parole as required or receives approval for the
19 inmate's parole plan or both. Time served from the date that
20 an inmate refuses to accept and agree to the conditions of
21 parole or fails to receive approval for the inmate's parole
22 plan shall reduce the period, if any, to be served under parole
23 at a later date. If the district court has ordered that the
24 inmate make restitution to a victim as provided in Section
25 31-17-1 NMSA 1978, the board shall include restitution as a
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1 condition of parole. The board shall also personally apprise
2 the inmate of the conditions of parole and the inmate's duties
3 relating thereto.

4 E. The board may require, as a condition of parole,
5 that the inmate not purchase or consume alcoholic beverages and
6 surrender any current driver's license or identification card
7 issued by the motor vehicle division of the taxation and
8 revenue department and obtain, upon payment of the required
9 fee, a new driver's license or identification card with a
10 printed legend indicating that the person is prohibited from
11 purchasing alcoholic beverages. The board shall forward any
12 surrendered driver's license or identification card to the
13 motor vehicle division, together with a copy of the certificate
14 of parole authorizing issuance of a license or card with a
15 printed legend prohibiting the purchase of alcohol.

16 [~~E.~~] F. When a person on parole has performed the
17 obligations of the person's release for the period of parole
18 provided in this section, the board shall make a final order of
19 discharge and issue the person a certificate of discharge.

20 [~~F.~~] G. Pursuant to the provisions of Section
21 31-18-15 NMSA 1978, the board shall require the inmate as a
22 condition of parole:

23 (1) to pay the actual costs of parole services
24 to the adult probation and parole division of the corrections
25 department for deposit to the corrections department intensive

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1 supervision fund not exceeding one thousand eight hundred
2 dollars (\$1,800) annually to be paid in monthly installments of
3 not less than twenty-five dollars (\$25.00) and not more than
4 one hundred fifty dollars (\$150), as set by the appropriate
5 district supervisor of the adult probation and parole division,
6 based upon the financial circumstances of the defendant. The
7 defendant's payment of the supervised parole costs shall not be
8 waived unless the board holds an evidentiary hearing and finds
9 that the defendant is unable to pay the costs. If the board
10 waives the defendant's payment of the supervised parole costs
11 and the defendant's financial circumstances subsequently change
12 so that the defendant is able to pay the costs, the appropriate
13 district supervisor of the adult probation and parole division
14 shall advise the board and the board shall hold an evidentiary
15 hearing to determine whether the waiver should be rescinded;
16 and

17 (2) to reimburse a law enforcement agency or
18 local crime stopper program for the amount of any reward paid
19 by the agency or program for information leading to the
20 inmate's arrest, prosecution or conviction.

21 [~~G.~~] H. The provisions of this section shall
22 apply to all inmates except geriatric, permanently
23 incapacitated and terminally ill inmates eligible for the
24 medical and geriatric parole program as provided by the
25 Parole Board Act."

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1 Section 3. A new section of the Liquor Control Act is
2 enacted to read:

3 "[NEW MATERIAL] SALES PROHIBITED TO PERSONS WITH CERTAIN
4 DRIVER'S LICENSES OR IDENTIFICATION CARDS.--

5 A. A licensee or a licensee's agent or employee
6 shall not sell alcoholic beverages to a person who has a
7 driver's license or an identification card that indicates
8 that the person is prohibited from purchasing alcohol.

9 B. A violation of the provisions of Subsection A
10 of this section is a misdemeanor, and the offender shall be
11 sentenced pursuant to Section 31-19-1 NMSA 1978. A third or
12 subsequent violation of the provisions of Subsection A of
13 this section is a fourth degree felony, and the offender
14 shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

15 C. It is an affirmative defense to a criminal
16 prosecution brought pursuant to this section that, before
17 selling any alcoholic beverages, the accused in good faith
18 demanded and was shown documentary evidence of age and
19 identity containing a picture and issued by a federal, state,
20 county or municipal government."

21 Section 4. Section 60-6C-1 NMSA 1978 (being Laws 1981,
22 Chapter 39, Section 97, as amended) is amended to read:

23 "60-6C-1. GROUNDS FOR SUSPENSION, REVOCATION OR
24 ADMINISTRATIVE FINE--REPORTING REQUIREMENT.--

25 A. The director may suspend or revoke the license
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1 or permit or fine the licensee in an amount not more than ten
2 thousand dollars (\$10,000), or both, when [~~he~~] the director
3 finds that [~~any~~] a licensee has:

4 (1) violated [~~any~~] a provision of the Liquor
5 Control Act or [~~any regulation~~] a rule or order promulgated
6 pursuant to that act;

7 (2) been convicted of a felony pursuant to
8 the provisions of the Criminal Code, the Liquor Control Act
9 or federal law; or

10 (3) permitted [~~his~~] the licensee's licensed
11 premises to remain a public nuisance in the neighborhood
12 where it is located after written notice from the director
13 that investigation by the department has revealed that the
14 establishment is a public nuisance in the neighborhood.

15 B. The director shall suspend or revoke the
16 license or permit and may fine the licensee in an amount not
17 to exceed ten thousand dollars (\$10,000), or both, when [~~he~~]
18 the director finds that any licensee or:

19 (1) [~~his~~] the licensee's employee or agent
20 knowingly has sold, served or given [~~any~~] an alcoholic
21 beverage to a minor in violation of Section 60-7B-1 NMSA
22 1978, [~~or~~] to an intoxicated person in violation of Section
23 60-7A-16 NMSA 1978 or to a person with a driver's license or
24 identification card that prohibits the purchase of alcoholic
25 beverages in violation of Section 3 of this 2009 act on two

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1 separate occasions within any twelve-month period; or

2 (2) [~~his~~] the licensee's agent has made
3 [~~any~~] a material false statement or concealed [~~any~~] material
4 facts in [~~his~~] the licensee's application for the license or
5 permit granted [~~him~~] the licensee pursuant to the provisions
6 of the Liquor Control Act.

7 C. [~~Any~~] A licensee aggrieved by a revocation,
8 suspension or fine proposed to be imposed by the director
9 pursuant to this section shall be entitled to the hearing
10 procedures set forth in Chapter 60, Article 6C NMSA 1978
11 before the revocation, suspension or fine shall be effective.

12 D. [~~Any~~] A charge filed against a licensee by the
13 department and the resulting disposition of the charge shall
14 be reported to the department of public safety and local law
15 enforcement agencies whose jurisdictions include the licensed
16 establishment."

17 Section 5. Section 60-6E-8 NMSA 1978 (being Laws 1999,
18 Chapter 277, Section 9) is amended to read:

19 "60-6E-8. SERVER PERMIT--SUSPENSION--REVOCATION--
20 ADMINISTRATIVE FINES--PENALTIES.--

21 A. In addition to any other penalties available,
22 the following penalties may be imposed for sales to minors,
23 [~~or~~] intoxicated persons or a person with a driver's license
24 or identification card that prohibits the purchase of
25 alcoholic beverages in violation of the provisions of the

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1 Liquor Control Act or rules of the division:

2 ~~[A.]~~ (1) the director may suspend a server's
3 server permit for a period of thirty days or fine the server
4 in an amount not to exceed five hundred dollars (\$500), or
5 both, when ~~[he]~~ the director finds that the server is guilty
6 of a first offense of selling, serving or dispensing an
7 alcoholic beverage to an intoxicated person in violation of
8 Section 60-7A-16 NMSA 1978, ~~[or]~~ to a minor in violation of
9 Section 60-7B-1 NMSA 1978 or to a person with a driver's
10 license or identification card that prohibits the purchase of
11 alcoholic beverages in violation of Section 3 of this 2009
12 act;

13 ~~[B.]~~ (2) the director shall suspend a
14 server's server permit for a period of one year when ~~[he]~~ the
15 director finds that the server is guilty of a second offense
16 of selling, serving or dispensing alcoholic beverages to an
17 intoxicated ~~[persons]~~ person in violation of Section 60-7A-16
18 NMSA 1978, ~~[or]~~ to ~~[minors]~~ a minor in violation of Section
19 60-7B-1 NMSA 1978 or to a person with a driver's license or
20 identification card that prohibits the purchase of alcoholic
21 beverages in violation of Section 3 of this 2009 act arising
22 separately from the incident giving rise to ~~[his]~~ the first
23 offense;

24 ~~[C.]~~ (3) the director shall permanently
25 revoke a server's server permit when ~~[he]~~ the director finds

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1 that the server is guilty of a third offense of selling,
2 serving or dispensing alcoholic beverages to an intoxicated
3 ~~[persons]~~ person in violation of Section 60-7A-16 NMSA 1978,
4 ~~[or]~~ to ~~[minors]~~ a minor in violation of Section 60-7B-1 NMSA
5 1978 or to a person with a driver's license or identification
6 card that prohibits the purchase of alcoholic beverages in
7 violation of Section 3 of this 2009 act arising separately
8 from the incidents giving rise to ~~[his]~~ the first and second
9 offenses;

10 ~~[D-]~~ (4) no person whose server permit is
11 suspended or revoked pursuant to the provisions of this
12 section may be a server of alcoholic beverages on a licensed
13 premises during the period of suspension or revocation; and

14 ~~[E-]~~ (5) no person whose server permit is
15 suspended may serve alcoholic beverages on or after the date
16 of suspension unless the person obtains a new server permit
17 in accordance with the provisions of ~~[Article 6D of]~~ Chapter
18 60, Article 6E NMSA 1978.

19 ~~[F-]~~ B. Nothing in ~~[this]~~ the Alcohol Server
20 Education Article of the Liquor Control Act shall be
21 interpreted to waive ~~[any]~~ a license holder's liability that
22 may arise pursuant to the provisions of ~~[this act]~~ that
23 article."

24 Section 6. Section 66-5-47 NMSA 1978 (being Laws 1978,
25 Chapter 35, Section 269, as amended) is amended to read:

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1 "66-5-47. PHOTOGRAPHS ON DRIVER'S LICENSES--PRINTED
2 LEGENDS--EVIDENCE OF APPLICANT'S AGE--EVIDENCE OF DISCHARGE
3 FROM PROBATION OR PAROLE.--

4 A. The department shall reproduce the likeness of
5 drivers [~~subject to the following conditions:~~

6 ~~(1)~~ on all driver's licenses. Photographs
7 or other reproductions of the likeness of all persons shall
8 show a full face or front view [~~and~~

9 ~~(2)~~ photographs or other reproductions of
10 the likeness of all persons].

11 B. The driver's license of a person under the age
12 of twenty-one years shall have a printed legend, indicating
13 that the person is under twenty-one, which shall be displayed
14 in such manner as to be easily read by any person inspecting
15 the license.

16 C. The driver's license of a person authorized,
17 as a condition of probation or parole, to obtain a license
18 that indicates that the person is prohibited from purchasing
19 alcoholic beverages, shall have a similar appearance to the
20 license of a person under twenty-one years of age, except
21 that the printed legend shall indicate that the person is
22 prohibited from purchasing alcoholic beverages.

23 D. A person with a printed legend on a driver's
24 license as provided in Subsection C of this section may
25 obtain a license without the printed legend upon presentation

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1 to the division of:

2 (1) a certified copy of a court document
3 indicating that the defendant is no longer on probation;

4 (2) a parole discharge certificate; or

5 (3) a certificate of completion from the
6 corrections department.

7 ~~[B-]~~ E. Each applicant for an initial license or
8 a replacement license shall produce evidence of the
9 applicant's age. Proof of an applicant's age shall be a
10 birth certificate, certified copy of a birth certificate, a
11 church record purporting to show the date of birth and
12 baptism, an acknowledged copy of the church record, a valid
13 passport or other evidence ~~[which]~~ that the secretary deems
14 sufficient. The date of birth shown on ~~[any]~~ a driver's
15 license or ~~[any]~~ instruction permit issued by the department
16 shall coincide with the date of birth shown on the proof of
17 applicant's age."

18 Section 7. Section 66-5-405 NMSA 1978 (being Laws
19 1978, Chapter 35, Section 332, as amended) is amended to
20 read:

21 "66-5-405. CONTENTS OF IDENTIFICATION CARD--PRINTED
22 LEGENDS.--

23 A. The identification card shall adequately
24 describe the registrant and bear ~~[his]~~ the registrant's
25 picture that shall show a full face or front view for all

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1 registrants and indicate donor status. [~~All identification~~
2 ~~cards of persons under the age of twenty-one years shall have~~
3 ~~a printed legend indicating that the person is under twenty-~~
4 ~~one.~~] The identification card shall bear the following
5 statement:

6 "STATE OF NEW MEXICO IDENTIFICATION

7 CARD NO. _____

8 This card is provided solely for the purpose of establishing
9 that the bearer described on the card was not the holder of a
10 New Mexico driver's license as of the date of issuance of
11 this card. This identification card is not a license.
12 ISSUED FOR IDENTIFICATION PURPOSES ONLY".

13 B. An identification card of a person under the
14 age of twenty-one years shall have a printed legend
15 indicating that the person is under twenty-one.

16 C. An identification card of a person authorized,
17 as a condition of probation or parole, to obtain a card that
18 indicates that the person is prohibited from purchasing
19 alcoholic beverages shall have a similar appearance to the
20 identification card of a person under twenty-one years of
21 age, except that the printed legend shall indicate that the
22 person is prohibited from purchasing alcoholic beverages.

23 D. A person with a printed legend on an
24 identification card as provided in Subsection C of this
25 section may obtain a card without the printed legend upon

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1 presentation to the division of:

2 (1) a certified copy of a court document
3 indicating that the defendant is no longer on probation;

4 (2) a parole discharge certificate; or

5 (3) a certificate of completion from the
6 corrections department."

7 Section 8. Section 66-8-102 NMSA 1978 (being Laws
8 1953, Chapter 139, Section 54, as amended) is amended to
9 read:

10 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
11 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
12 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

13 A. It is unlawful for a person who is under the
14 influence of intoxicating liquor to drive a vehicle within
15 this state.

16 B. It is unlawful for a person who is under the
17 influence of any drug to a degree that renders the person
18 incapable of safely driving a vehicle to drive a vehicle
19 within this state.

20 C. It is unlawful for:

21 (1) a person to drive a vehicle in this
22 state if the person has an alcohol concentration of eight one
23 hundredths or more in the person's blood or breath within
24 three hours of driving the vehicle and the alcohol
25 concentration results from alcohol consumed before or while

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1 driving the vehicle; [~~or~~]

2 (2) a person to drive a commercial motor
3 vehicle in this state if the person has an alcohol
4 concentration of four one hundredths or more in the person's
5 blood or breath within three hours of driving the commercial
6 motor vehicle and the alcohol concentration results from
7 alcohol consumed before or while driving the vehicle; or

8 (3) a person with a driver's license that
9 prohibits the purchase of alcoholic beverages or who is
10 authorized to obtain such a license to drive a vehicle in
11 this state if the person has an alcohol concentration of two
12 one hundredths or more in the person's blood or breath within
13 three hours of driving the vehicle and the alcohol
14 concentration results from alcohol consumed before or while
15 driving the vehicle.

16 D. Aggravated driving while under the influence
17 of intoxicating liquor or drugs consists of a person who:

18 (1) drives a vehicle in this state and has
19 an alcohol concentration of sixteen one hundredths or more in
20 the person's blood or breath within three hours of driving
21 the vehicle and the alcohol concentration results from
22 alcohol consumed before or while driving the vehicle;

23 (2) has caused bodily injury to a human
24 being as a result of the unlawful operation of a motor
25 vehicle while driving under the influence of intoxicating

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1 liquor or drugs; or

2 (3) refused to submit to chemical testing,
3 as provided for in the Implied Consent Act, and in the
4 judgment of the court, based upon evidence of intoxication
5 presented to the court, was under the influence of
6 intoxicating liquor or drugs.

7 E. A person under first conviction pursuant to
8 this section shall be punished, notwithstanding the
9 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
10 not more than ninety days or by a fine of not more than five
11 hundred dollars (\$500), or both; provided that if the
12 sentence is suspended in whole or in part or deferred, the
13 period of probation may extend beyond ninety days but shall
14 not exceed one year. Upon a first conviction pursuant to
15 this section, an offender shall be sentenced to not less than
16 twenty-four hours of community service. In addition, the
17 offender may be required to pay a fine of three hundred
18 dollars (\$300). The offender shall be ordered by the court
19 to participate in and complete a screening program described
20 in Subsection K of this section and to attend a driver
21 rehabilitation program for alcohol or drugs, also known as a
22 "DWI school", approved by the bureau and also may be required
23 to participate in other rehabilitative services as the court
24 shall determine to be necessary. In addition to those
25 penalties, when an offender commits aggravated driving while

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1 under the influence of intoxicating liquor or drugs, the
2 offender shall be sentenced to not less than forty-eight
3 consecutive hours in jail. If an offender fails to complete,
4 within a time specified by the court, any community service,
5 screening program, treatment program or DWI school ordered by
6 the court or fails to comply with any other condition of
7 probation, the offender shall be sentenced to not less than
8 an additional forty-eight consecutive hours in jail. Any
9 jail sentence imposed pursuant to this subsection for failure
10 to complete, within a time specified by the court, any
11 community service, screening program, treatment program or
12 DWI school ordered by the court or for aggravated driving
13 while under the influence of intoxicating liquor or drugs
14 shall not be suspended, deferred or taken under advisement.
15 On a first conviction pursuant to this section, any time
16 spent in jail for the offense prior to the conviction for
17 that offense shall be credited to any term of imprisonment
18 fixed by the court. A deferred sentence pursuant to this
19 subsection shall be considered a first conviction for the
20 purpose of determining subsequent convictions.

21 F. A second or third conviction pursuant to this
22 section shall be punished, notwithstanding the provisions of
23 Section 31-18-13 NMSA 1978, by imprisonment for not more than
24 three hundred sixty-four days or by a fine of not more than
25 one thousand dollars (\$1,000), or both; provided that if the

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1 sentence is suspended in whole or in part, the period of
2 probation may extend beyond one year but shall not exceed
3 five years. Notwithstanding any provision of law to the
4 contrary for suspension or deferment of execution of a
5 sentence:

6 (1) upon a second conviction, an offender
7 shall be sentenced to a jail term of not less than ninety-six
8 consecutive hours, not less than forty-eight hours of
9 community service and a fine of five hundred dollars (\$500).
10 In addition to those penalties, when an offender commits
11 aggravated driving while under the influence of intoxicating
12 liquor or drugs, the offender shall be sentenced to a jail
13 term of not less than ninety-six consecutive hours. If an
14 offender fails to complete, within a time specified by the
15 court, any community service, screening program or treatment
16 program ordered by the court, the offender shall be sentenced
17 to not less than an additional seven consecutive days in
18 jail. A penalty imposed pursuant to this paragraph shall not
19 be suspended or deferred or taken under advisement; and

20 (2) upon a third conviction, an offender
21 shall be sentenced to a jail term of not less than thirty
22 consecutive days, not less than ninety-six hours of community
23 service and a fine of seven hundred fifty dollars (\$750). In
24 addition to those penalties, when an offender commits
25 aggravated driving while under the influence of intoxicating

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1 liquor or drugs, the offender shall be sentenced to a jail
2 term of not less than sixty consecutive days. If an offender
3 fails to complete, within a time specified by the court, any
4 community service, screening program or treatment program
5 ordered by the court, the offender shall be sentenced to not
6 less than an additional sixty consecutive days in jail. A
7 penalty imposed pursuant to this paragraph shall not be
8 suspended or deferred or taken under advisement.

9 G. Upon a fourth conviction pursuant to this
10 section, an offender is guilty of a fourth degree felony and,
11 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
12 shall be sentenced to a term of imprisonment of eighteen
13 months, six months of which shall not be suspended, deferred
14 or taken under advisement.

15 H. Upon a fifth conviction pursuant to this
16 section, an offender is guilty of a fourth degree felony and,
17 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
18 shall be sentenced to a term of imprisonment of two years,
19 one year of which shall not be suspended, deferred or taken
20 under advisement.

21 I. Upon a sixth conviction pursuant to this
22 section, an offender is guilty of a third degree felony and,
23 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
24 shall be sentenced to a term of imprisonment of thirty
25 months, eighteen months of which shall not be suspended,

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1 deferred or taken under advisement.

2 J. Upon a seventh or subsequent conviction
3 pursuant to this section, an offender is guilty of a third
4 degree felony and, notwithstanding the provisions of Section
5 31-18-15 NMSA 1978, shall be sentenced to a term of
6 imprisonment of three years, two years of which shall not be
7 suspended, deferred or taken under advisement.

8 K. Upon any conviction pursuant to this section,
9 an offender shall be required to participate in and complete,
10 within a time specified by the court, an alcohol or drug
11 abuse screening program approved by the department of finance
12 and administration and, if necessary, a treatment program
13 approved by the court. The requirement imposed pursuant to
14 this subsection shall not be suspended, deferred or taken
15 under advisement.

16 L. Upon a second or third conviction pursuant to
17 this section, an offender shall be required to participate in
18 and complete, within a time specified by the court:

19 (1) not less than a twenty-eight-day
20 inpatient, residential or in-custody substance abuse
21 treatment program approved by the court;

22 (2) not less than a ninety-day outpatient
23 treatment program approved by the court;

24 (3) a drug court program approved by the
25 court; or

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1 (4) any other substance abuse treatment
2 program approved by the court.

3 The requirement imposed pursuant to this subsection
4 shall not be suspended, deferred or taken under advisement.

5 M. Upon a felony conviction pursuant to this
6 section, the corrections department shall provide substance
7 abuse counseling and treatment to the offender in its
8 custody. While the offender is on probation or parole under
9 its supervision, the corrections department shall also
10 provide substance abuse counseling and treatment to the
11 offender or shall require the offender to obtain substance
12 abuse counseling and treatment.

13 N. Upon a conviction pursuant to this section, an
14 offender shall be required to obtain an ignition interlock
15 license and have an ignition interlock device installed and
16 operating on all motor vehicles driven by the offender,
17 pursuant to rules adopted by the bureau. Unless determined
18 by the sentencing court to be indigent, the offender shall
19 pay all costs associated with having an ignition interlock
20 device installed on the appropriate motor vehicles. The
21 offender shall operate only those vehicles equipped with
22 ignition interlock devices for:

23 (1) a period of one year, for a first
24 offender;

25 (2) a period of two years, for a second

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1 conviction pursuant to this section;

2 (3) a period of three years, for a third
3 conviction pursuant to this section; or

4 (4) the remainder of the offender's life,
5 for a fourth or subsequent conviction pursuant to this
6 section.

7 O. Five years from the date of conviction and
8 every five years thereafter, a fourth or subsequent offender
9 may apply to a district court for removal of the ignition
10 interlock device requirement provided in this section and for
11 restoration of a driver's license. A district court may, for
12 good cause shown, remove the ignition interlock device
13 requirement and order restoration of the license; provided
14 that the offender has not been subsequently convicted of
15 driving a motor vehicle while under the influence of
16 intoxicating liquor or drugs. Good cause may include an
17 alcohol screening and proof from the interlock vendor that
18 the person has not had violations of the interlock device.

19 P. In the case of a first, second or third
20 offense under this section, the magistrate court has
21 concurrent jurisdiction with district courts to try the
22 offender.

23 Q. A conviction pursuant to a municipal or county
24 ordinance in New Mexico or a law of any other jurisdiction,
25 territory or possession of the United States or of a tribe,

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1 when that ordinance or law is equivalent to New Mexico law
2 for driving while under the influence of intoxicating liquor
3 or drugs, and prescribes penalties for driving while under
4 the influence of intoxicating liquor or drugs, shall be
5 deemed to be a conviction pursuant to this section for
6 purposes of determining whether a conviction is a second or
7 subsequent conviction.

8 R. In addition to any other fine or fee that may
9 be imposed pursuant to the conviction or other disposition of
10 the offense under this section, the court may order the
11 offender to pay the costs of any court-ordered screening and
12 treatment programs.

13 S. With respect to this section and
14 notwithstanding any provision of law to the contrary, if an
15 offender's sentence was suspended or deferred in whole or in
16 part and the offender violates any condition of probation,
17 the court may impose any sentence that the court could have
18 originally imposed and credit shall not be given for time
19 served by the offender on probation.

20 T. As used in this section:

21 (1) "bodily injury" means an injury to a
22 person that is not likely to cause death or great bodily harm
23 to the person, but does cause painful temporary disfigurement
24 or temporary loss or impairment of the functions of any
25 member or organ of the person's body; and

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1 (2) "commercial motor vehicle" means a motor
2 vehicle or combination of motor vehicles used in commerce to
3 transport passengers or property if the motor vehicle:

4 (a) has a gross combination weight
5 rating of more than twenty-six thousand pounds inclusive of a
6 towed unit with a gross vehicle weight rating of more than
7 ten thousand pounds;

8 (b) has a gross vehicle weight rating
9 of more than twenty-six thousand pounds;

10 (c) is designed to transport sixteen
11 or more passengers, including the driver; or

12 (d) is of any size and is used in the
13 transportation of hazardous materials, which requires the
14 motor vehicle to be placarded under applicable law."

15 Section 9. Section 66-8-111 NMSA 1978 (being Laws
16 1978, Chapter 35, Section 519, as amended) is amended to
17 read:

18 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--
19 TESTING--GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO
20 DRIVE.--

21 A. If a person under arrest for violation of an
22 offense enumerated in the Motor Vehicle Code refuses upon
23 request of a law enforcement officer to submit to chemical
24 tests designated by the law enforcement agency as provided in
25 Section 66-8-107 NMSA 1978, none shall be administered except

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1 when a municipal judge, magistrate or district judge issues a
2 search warrant authorizing chemical tests as provided in
3 Section 66-8-107 NMSA 1978 upon finding in a law enforcement
4 officer's written affidavit that there is probable cause to
5 believe that the person has driven a motor vehicle while
6 under the influence of alcohol or a controlled substance,
7 thereby causing the death or great bodily injury of another
8 person, or there is probable cause to believe that the person
9 has committed a felony while under the influence of alcohol
10 or a controlled substance and that chemical tests as provided
11 in Section 66-8-107 NMSA 1978 will produce material evidence
12 in a felony prosecution.

13 B. The department, upon receipt of a statement
14 signed under penalty of perjury from a law enforcement
15 officer stating the officer's reasonable grounds to believe
16 the arrested person had been driving a motor vehicle within
17 this state while under the influence of intoxicating liquor
18 or drugs and that, upon request, the person refused to submit
19 to a chemical test after being advised that failure to submit
20 could result in revocation of the person's privilege to
21 drive, shall revoke the person's New Mexico driver's license
22 or any nonresident operating privilege for a period of one
23 year or until all conditions for license reinstatement are
24 met, whichever is later.

25 C. The department, upon receipt of a statement

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1 signed under penalty of perjury from a law enforcement
2 officer stating the officer's reasonable grounds to believe
3 the arrested person had been driving a motor vehicle within
4 this state while under the influence of intoxicating liquor
5 and that the person submitted to chemical testing pursuant to
6 Section 66-8-107 NMSA 1978 and the test results indicated an
7 alcohol concentration in the person's blood or breath of
8 eight one hundredths or more if the person is twenty-one
9 years of age or older, four one hundredths or more if the
10 person is driving a commercial motor vehicle or two one
11 hundredths or more if the person is less than twenty-one
12 years of age or has a driver's license that prohibits the
13 purchase of alcoholic beverages or is authorized to obtain
14 such a license, shall revoke the person's license or permit
15 to drive or [~~his~~] the person's nonresident operating
16 privilege for a period of:

17 (1) six months or until all conditions for
18 license reinstatement are met, whichever is later, if the
19 person is twenty-one years of age or older;

20 (2) one year or until all conditions for
21 license reinstatement are met, whichever is later, if the
22 person was less than twenty-one years of age at the time of
23 the arrest, notwithstanding any provision of the Children's
24 Code; or

25 (3) one year or until all conditions for

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1 license reinstatement are met, whichever is later, if the
2 [~~person has previously had his~~] person's license has been
3 revoked previously pursuant to the provisions of this
4 section, notwithstanding the provisions of Paragraph (1) of
5 this subsection.

6 D. The determination of alcohol concentration
7 shall be based on the grams of alcohol in one hundred
8 milliliters of blood or the grams of alcohol in two hundred
9 ten liters of breath.

10 E. If the person subject to the revocation
11 provisions of this section is a resident or will become a
12 resident within one year and is without a license to operate
13 a motor vehicle in this state, the department shall deny the
14 issuance of a license to [~~him~~] the person for the appropriate
15 period of time as provided in Subsections B and C of this
16 section.

17 F. A statement signed by a law enforcement
18 officer, pursuant to the provisions of Subsection B or C of
19 this section, shall be sworn to by the officer or shall
20 contain a declaration substantially to the effect: "I hereby
21 declare under penalty of perjury that the information given
22 in this statement is true and correct to the best of my
23 knowledge." The statement may be signed and submitted
24 electronically in a manner and form approved by the
25 department. A law enforcement officer who signs a statement,

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1 knowing that the statement is untrue in any material issue or
2 matter, is guilty of perjury as provided in Section 66-5-38
3 NMSA 1978."

4 Section 10. Section 66-8-111.1 NMSA 1978 (being Laws
5 1984, Chapter 72, Section 7, as amended by Laws 2003, Chapter
6 51, Section 14 and by Laws 2003, Chapter 90, Section 7) is
7 amended to read:

8 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
9 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
10 HEARING.--On behalf of the department, a law enforcement
11 officer requesting a chemical test or directing the
12 administration of a chemical test pursuant to Section
13 66-8-107 NMSA 1978 shall serve immediate written notice of
14 revocation and of right to a hearing on a person who refuses
15 to permit chemical testing or on a person who submits to a
16 chemical test the results of which indicate an alcohol
17 concentration in the person's blood or breath of eight one
18 hundredths or more if the person is twenty-one years of age
19 or older, four one hundredths or more if the person is
20 driving a commercial motor vehicle or two one hundredths or
21 more if the person is less than twenty-one years of age or
22 has a driver's license that prohibits the purchase of
23 alcoholic beverages or is authorized to obtain such a
24 license. Upon serving notice of revocation, the law
25 enforcement officer shall take the license or permit of the

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1 driver, if any, and issue a temporary license valid for
2 twenty days or, if the driver requests a hearing pursuant to
3 Section 66-8-112 NMSA 1978, valid until the date the
4 department issues the order following that hearing; provided
5 that a temporary license shall not be issued to a driver
6 without a valid license or permit. The law enforcement
7 officer shall send the person's driver's license to the
8 department along with the signed statement required pursuant
9 to Section 66-8-111 NMSA 1978."

10 Section 11. Section 66-8-112 NMSA 1978 (being Laws
11 1978, Chapter 35, Section 520, as amended by Laws 2003,
12 Chapter 51, Section 15 and by Laws 2003, Chapter 90, Section
13 8) is amended to read:

14 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO
15 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--
16 REVIEW.--

17 A. The effective date of revocation pursuant to
18 Section 66-8-111 NMSA 1978 is twenty days after notice of
19 revocation or, if the person whose driver's license or
20 privilege to drive is being revoked or denied requests a
21 hearing pursuant to this section, the date that the
22 department issues the order following that hearing. The date
23 of notice of revocation is:

24 (1) the date the law enforcement officer
25 serves written notice of revocation and of right to a hearing

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1 pursuant to Section 66-8-111.1 NMSA 1978; or

2 (2) in the event the results of a chemical
3 test cannot be obtained immediately, the date notice of
4 revocation is served by mail by the department. This notice
5 of revocation and of right to a hearing shall be sent by
6 certified mail and shall be deemed to have been served on the
7 date borne by the return receipt showing delivery, refusal of
8 the addressee to accept delivery or attempted delivery of the
9 notice at the address obtained by the arresting law
10 enforcement officer or on file with the department.

11 B. Within ten days after receipt of notice of
12 revocation pursuant to Subsection A of this section, a person
13 whose license or privilege to drive is revoked or denied or
14 the person's agent may request a hearing. The hearing
15 request shall be made in writing and shall be accompanied by
16 a payment of twenty-five dollars (\$25.00) or a sworn
17 statement of indigency on a form provided by the department.
18 A standard for indigency shall be established pursuant to
19 regulations adopted by the department. Failure to request a
20 hearing within ten days shall result in forfeiture of the
21 person's right to a hearing. Any person less than eighteen
22 years of age who fails to request a hearing within ten days
23 shall have notice of revocation sent to [~~his~~] the person's
24 parent, guardian or custodian by the department. A date for
25 the hearing shall be set by the department, if practical,

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1 within thirty days after receipt of notice of revocation.

2 The hearing shall be held in the county in which the offense
3 for which the person was arrested took place.

4 C. The department may postpone or continue any
5 hearing on its own motion or upon application from the person
6 and for good cause shown for a period not to exceed ninety
7 days from the date of notice of revocation and provided that
8 the department extends the validity of the temporary license
9 for the period of the postponement or continuation.

10 D. At the hearing, the department or its agent
11 may administer oaths and may issue subpoenas for the
12 attendance of witnesses and the production of relevant books
13 and papers.

14 E. The hearing shall be limited to the following
15 issues:

16 (1) whether the law enforcement officer had
17 reasonable grounds to believe that the person had been
18 driving a motor vehicle within this state while under the
19 influence of intoxicating liquor or drugs;

20 (2) whether the person was arrested;

21 (3) whether this hearing is held no later
22 than ninety days after notice of revocation; and either

23 (4) whether:

24 (a) the person refused to submit to a
25 test upon request of the law enforcement officer; and

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1 (b) the law enforcement officer
2 advised that the failure to submit to a test could result in
3 revocation of the person's privilege to drive; or

4 (5) whether:

5 (a) the chemical test was administered
6 pursuant to the provisions of the Implied Consent Act; and

7 (b) the test results indicated an
8 alcohol concentration in the person's blood or breath of
9 eight one hundredths or more if the person is twenty-one
10 years of age or older, four one hundredths or more if the
11 person is driving a commercial motor vehicle or two one
12 hundredths or more if the person is less than twenty-one
13 years of age or has a driver's license that prohibits the
14 purchase of alcoholic beverages or is authorized to obtain
15 such a license.

16 F. The department shall enter an order sustaining
17 the revocation or denial of the person's license or privilege
18 to drive if the department finds that:

19 (1) the law enforcement officer had
20 reasonable grounds to believe the driver was driving a motor
21 vehicle while under the influence of intoxicating liquor or
22 drugs;

23 (2) the person was arrested;

24 (3) this hearing is held no later than
25 ninety days after notice of revocation; and

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(4) either:

(a) the person refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised [~~him~~] the person that [~~his~~] the person's failure to submit to the test could result in the revocation of [~~his~~] the person's privilege to drive; or

(b) that a chemical test was administered pursuant to the provisions of the Implied Consent Act and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age or has a driver's license that prohibits the purchase of alcoholic beverages or is authorized to obtain such a license.

G. If one or more of the elements set forth in Paragraphs (1) through (4) of Subsection F of this section are not found by the department, the person's license shall not be revoked.

H. A person adversely affected by an order of the department may seek review within thirty days in the district court in the county in which the offense for which the person

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1 was arrested took place. The district court, upon thirty
2 days' written notice to the department, shall hear the case.
3 On review, it is for the court to determine only whether
4 reasonable grounds exist for revocation or denial of the
5 person's license or privilege to drive based on the record of
6 the administrative proceeding.

7 I. Any person less than eighteen years of age
8 shall have results of [~~his~~] the person's hearing forwarded by
9 the department to [~~his~~] the person's parent, guardian or
10 custodian."

11 Section 12. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2009.